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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**LIFE ENRICHMENT FOUNDATION,
individually and on behalf of all others
similarly situated,**

Plaintiff,

-against-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, AHMASS L.
FAKAHANY, GREGORY J. FLEMING, and
JEFFREY N. EDWARDS.**

Defendants.

Civil Action No. 07 Civ. 09633 (LBS)

[Additional captions on succeeding pages.]

**[PROPOSED] ORDER APPOINTING LEAD PLAINTIFF FOR THE
FIRST REPUBLIC MERGER CLASS AND APPROVAL OF LEAD PLAINTIFF**

**MICHAEL J. SAVENA, Individually and on
behalf of all others similarly situated,**

Plaintiff,

-against-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, AHMASS L.
FAKAHANY, GREGORY J. FLEMING, and
JEFFREY N. EDWARDS.**

Defendants.

Civil Action No. 07 Civ. 09837 (LBS)

**GARY KOSSEFF, Individually and On
Behalf of All Others Similarly Situated,**

Plaintiff,

-against-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, AHMASS L.
FAKAHANY, GREGORY J. FLEMING, and
JEFFREY N. EDWARDS.**

Defendants.

Civil Action No. 07 Civ. 10984 (LBS)

**ROBERT R. GARBER, Individually and on
behalf of all others similarly situated,**

Plaintiff,

Civil Action No. 07 Civ. 11080 (LBS)

-against-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, AHMASS L.
FAKAHANY, GREGORY J. FLEMING, and
JEFFREY N. EDWARDS.**

Defendants.

**JAMES CONN, Individually and On Behalf
of All Others Similarly Situated,**

Plaintiff,

Civil Action No. 07 Civ. 11626 (LBS)

-against-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, JEFFREY N.
EDWARDS, LAWRENCE A. TOSI,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, ALBERTO CRIBIORE,
JOHN D. FINNEGAN, JUDITH MAYHEW
JONAS, AULANA L. PETERS, JOSEPH W.
PRUEHER, ANN N. REESE, and CHARLES
O. ROSSOTTI,**

Defendants.

WHEREAS, the Court has considered the for Consolidation, Appointment of Lead Plaintiff and Approval of Lead Counsel,

IT IS HEREBY ORDERED THAT:

1. The Court hereby consolidates the Exchange Act actions, the first four captioned above, for all purposes including, but not limited to, discovery, pretrial proceedings and trial proceedings, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure as the Open Market Purchasers Class.

2. The Court directs that a separate caption be maintained for the Merger Class, which may be coordinated for discovery proceedings, but is not consolidated with the Exchange Act cases for pretrial or trial purposes.

3. Having reviewed the pending Motions and accompanying Memoranda of Law, the Court hereby appoints James Conn as Lead Plaintiff for the Merger Class. Lead Plaintiff satisfies the requirements for Lead Plaintiff pursuant to Section 27D(a)(3)(B)(iii) of the PSLRA.

4. Lead Plaintiff, pursuant to Section 27D(a)(3)(B)(v) of the PSLRA, has selected and retained the law firms of Pomerantz Haudek Block Grossman & Gross LLP and Cotchett, Pitre and McCarthy to serve as its Co-Lead Counsel in this consolidated action.

5. Plaintiff's Co-Lead Counsel shall have the following responsibilities and duties, to be carried out either personally or through counsel whom Co-Lead Counsel shall designate:

- (a) to coordinate the briefing and argument of motions;
- (b) to coordinate the conduct of discovery proceedings;
- (c) to coordinate the examination of witnesses in depositions;
- (d) to coordinate the selection of counsel to act as a spokesperson at pretrial conferences;
- (e) to call meetings of the plaintiff's counsel as they deem necessary and

appropriate from time to time;

- (f) to coordinate all settlements negotiations with counsel for defendants;
- (g) to coordinate and direct the pretrial discovery proceedings and the preparation for trial and the trial of this matter and to delegate work responsibilities to selected counsel as may be required; and
- (h) to supervise any other matters concerning the prosecution, resolution or settlement of the Merger Action.

6. No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any plaintiff without the approval of Co-Lead Counsel, so as to prevent duplicative pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted without the approval of Co-Lead Counsel.

7. Co-Lead Counsel shall have the responsibility of receiving and disseminating Court orders and notices.

8. Co-Lead Counsel shall be the contact between plaintiffs' counsel, and shall direct and coordinate the activities of plaintiffs' counsel.

9. Defendants shall effect service of papers on plaintiffs by serving a copy of same on Co-Lead Counsel by overnight mail service, electronic or hand delivery. Plaintiffs shall effect service of papers on defendants by serving a copy of same on defendants' counsel by overnight mail service, electronic or hand delivery.

10. During the pendency of this litigation, or until further order of this Court, the parties shall take reasonable steps to preserve all documents within their possession, custody, or control, including computer-generated and stored information, and materials such as computerized data and electronic mail, containing information which is relevant to the subject matter of the pending litigation.

SINGLE CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

15. The Court hereby orders that Lead Plaintiff is permitted to file a single consolidated amended class action complaint within 60 days of entry of this Order.

16. The Defendants shall either file an Answer or other responsive pleading within 60 days of the filing of Lead Plaintiff's Amended Class Action Complaint.

17. If the Defendants file a motion to dismiss as their responsive pleading, Lead Plaintiff shall file its opposition thereto within 60 days of service of Defendants' motion to dismiss, and Defendants shall file any reply thereto within 30 days of service of Lead Plaintiff's opposition.

SO ORDERED.

Dated: _____, 2008
New York, New York

Honorable Leonard B. Sand
United States District Judge
Southern District of New York